

GOVERNMENT PROPOSED JURY INST. NO. 1

Statutory Language

Section 2 of Title 18 of the United States Code provides, in part, as follows:

Section 2. ***Principals***

(a) Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal.

(b) Whoever willfully causes an act to be done which if directly performed by him or another would be an offense against the United States, is punishable as a principal.

GOVERNMENT PROPOSED JURY INST. NO. 2Principal -- To Aid, Abet, Cause, etc.
(Single Defendant)

The guilt of a defendant may be established without proof that the accused personally did every act constituting the offense charged.

"Whoever commits an offense against the United States, or aids, abets, counsels, commands, induces, or procures its commission, is punishable as a principal."

"Whoever willfully causes an act to be done, which if directly performed by him or another would be an offense against the United States, is punishable as a principal."

In other words, every person who willfully participates in the commission of a crime may be found to be guilty of that offense. Participation is willful if done voluntarily and intentionally, and with the specific intent to do something the law forbids, or with the specific intent to fail to do something the law requires to be done; that is to say, with bad purpose either to disobey or to disregard the law.

18 U.S.C. § 2

Devitt and Blackmar, *Federal Jury Practice and Instructions* (3d Ed. 1977), Section 12.01

Nye & Nissen v. United States, 336 U.S. 613, 618-20 (1949)

Cheek v. United States, 498 U.S. 192, 196 (1991)

United States v. Horton, 847 F.2d 313, 321-22 (6th Cir. 1988)

United States v. Martin, 747 F.2d 1404, 1407 (11th Cir. 1984)

GOVERNMENT PROPOSED JURY INST. NO. 3Principal -- To Aid, Abet, Cause, etc.
(Multiple Defendants)

In a case where two or more persons are charged with the commission of a crime, the guilt of any defendant may be established without proof that he personally did every act constituting the offense charged.

"Whoever commits an offense against the United States, or aids, abets, counsels, commands, induces, or procures its commission, is punishable as a principal.

"Whoever willfully causes an act to be done, which if directly performed by him or another would be an offense against the United States, is punishable as a principal."

In other words, every person who willfully participates in the commission of a crime may be found to be guilty of that offense. Participation is willful if done voluntarily and intentionally, and with the specific intent to do something the law forbids, or with the specific intent to fail to do something the law requires to be done; that is to say, with bad purpose either to disobey or to disregard the law.

18 U.S.C. § 2

Devitt and Blackmar, *Federal Jury Practice and Instructions* (3d Ed. 1977), Section 12.02

Nye & Nissen v. United States, 336 U.S. 613, 618-20 (1949)

Cheek v. United States, 498 U.S. 192, 196 (1991)

United States v. Horton, 847 F.2d 313, 321-22 (6th Cir. 1988)

United States v. Martin, 747 F.2d 1404, 1407 (11th Cir. 1984)

GOVERNMENT PROPOSED JURY INST. NO. 4"Aid and Abet" -- Explained

A person may violate the law even though he or she does not personally do each and every act constituting the offense if that person "aided and abetted" the commission of the offense.

Section 2(a) of Title 18 of the United States Code provides:

"Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal."

Before a defendant may be held responsible for aiding and abetting others in the commission of a crime, it is necessary that the government prove beyond a reasonable doubt that the defendant knowingly and deliberately associated [**himself**] [**herself**] in some way with the crime charged and participated in it with the intent to commit the crime.

In order to be found guilty of aiding and abetting the commission of the crime charged in [**Count** _____ **of**] the indictment, the government must prove beyond a reasonable doubt that the Defendant _____:

One, knew that the crime charged was to be committed or was being committed,

Two, knowingly did some act for the purpose of [**aiding**] [**commanding**] [**encouraging**] the commission of that crime, and

Three, acted with the intention of causing the crime charged to be committed.

Before Defendant _____ may be found guilty as an aider or an abettor to the crime, the government must also prove, beyond a reasonable doubt, that someone committed each of the essential elements of the offense charged as detailed for you [**in Instruction**

No. ____].

Merely being present at the scene of the crime or merely knowing that a crime is being committed or is about to be committed is not sufficient conduct for the jury to find that the defendant aided and abetted the commission of that crime.

The government must prove that the Defendant _____ knowingly [**and deliberately**] associated [**himself**] [**herself**] with the crime in some way as a participant-- someone who wanted the crime to be committed-- not as a mere spectator.

18 U.S.C. § 2

Devitt, Blackmar, Wolff and O'Malley, **Federal Jury Practice and Instructions** (4th Ed. 1992), Section 18.01

United States v. Lindell, 881 F.2d 1313, 1323 (5th Cir. 1989), cert. denied, 496 U.S. 926 (1990)

United States v. Morrow, 923 F.2d 427, 436 (6th Cir. 1991)

United States v. Roan Eagle, 867 F.2d 436, 445 n.15 (8th Cir.), cert. denied, 490 U.S. 1028 (1989)

United States v. Lard, 734 F.2d 1290, 1298 (8th Cir. 1984)

United States v. Esparsen, 930 F.2d 1461, 1470 (10th Cir. 1991), cert. denied, 112 S. Ct. 882 (1992)

United States v. Payne, 750 F.2d 844, 860 (11th Cir. 1985)

GOVERNMENT PROPOSED JURY INST. NO. 6Aiding and Abetting

Any person who knowingly aids, abets, counsels, commands, induces or procures the commission of a crime is guilty of that crime. However, that person must knowingly associate himself [herself] with the criminal venture, participate in it, and try to make it succeed.

18 U.S.C. § 2

Federal Criminal Jury Instructions of the Seventh Circuit (1980 Ed.), Section 5.08 (modified)

United States v. Roan Eagle, 867 F.2d 436, 445 n.15 (8th Cir.), 490 U.S. 1028 (1989)

GOVERNMENT PROPOSED JURY INST. NO. 7Aiding and Abetting

A defendant may be found guilty of [**name principal offense**], even if the defendant personally did not commit the act or acts constituting the crime but aided and abetted in its commission. To prove a defendant guilty of aiding and abetting, the government must prove beyond a reasonable doubt:

First, the [**principal offense**] was committed;

Second, the defendant knowingly and intentionally aided, counseled, commanded, induced or procured _____ to commit _____ and

Third, the defendant acted before the crime was completed.

It is not enough that the defendant merely associated with _____, or was present at the scene of the crime, or unknowingly or unintentionally did things that were helpful to the principal.

The evidence must show beyond a reasonable doubt that the defendant acted with the knowledge and intention of helping _____ commit _____.

The government is not required to prove precisely which defendant actually committed the crime and which defendant aided and abetted.

18 U.S.C. § 2

Manual of Model Jury Instructions for the Ninth Circuit (1992 Ed.),
Section 5.01

Nye & Nissen v. United States, 336 U.S. 613, 619 (1949)

United States v. Abreu, 962 F.2d 1425, 1429 (1st Cir. 1992)

United States v. Labat, 905 F.2d 18, 23 (2d Cir. 1990)

United States v. Singh, 922 F.2d 1169, 1173 (5th Cir.), cert. denied, 112 S. Ct. 260 (1991)

United States v. Torres, 809 F.2d 429, 433 (7th Cir. 1987)

United States v. Lanier, 838 F.2d 281, 284 (8th Cir. 1988)

United States v. Perez, 922 F.2d 782, 785 (11th Cir.), cert. denied, 111 S. Ct. 2840 (1991)

GOVERNMENT PROPOSED JURY INST. NO. 9Aiding And Abetting (Agency)

The guilt of a defendant in a criminal case may be established without proof that the defendant personally did every act constituting the offense alleged. The law recognizes that, ordinarily, anything a person can do for himself may also be accomplished by that person through direction of another person as his or her agent, or by acting in concert with, or under the direction of, another person or persons in a joint effort or enterprise.

So, if another is acting under the direction of the defendant or if the defendant joins another person and performs acts with the intent to commit a crime, then the law holds the defendant responsible for the acts and conduct of such other persons just as though the defendant had committed the acts or engaged in such conduct.

Notice, however, that before any defendant may be held criminally responsible for the acts of others it is necessary that the accused deliberately associate himself in some way with the crime and participate in it with the intent to bring about the crime.

Of course, mere presence at the scene of a crime and knowledge that a crime is being committed are not sufficient to establish that a defendant either directed or aided and abetted the crime unless you find beyond a reasonable doubt that the defendant was a participant and not merely a knowing spectator.

In other words, you may not find any defendant guilty unless you find beyond a reasonable doubt that every element of the offense as defined in these instructions was committed by some person or persons, and that the defendant voluntarily participated

in its commission with the intent to violate the law.

18 U.S.C. § 2

Pattern Jury Instructions, Criminal Cases, Fifth Circuit (1990 Ed.), Section 2.06

United States v. Walker, 621 F.2d 163 (5th Cir. 1980)

United States v. Lindell, 881 F.2d 1313, 1323 (5th Cir. 1989), cert. denied, 496 U.S. 926 (1990)

United States v. Morrow, 923 F.2d 427, 436 (6th Cir. 1991)

United States v. Roan Eagle, 867 F.2d 436, 445 n.15 (8th Cir.), cert. denied, 490 U.S. 1028 (1989)

United States v. Lard, 734 F.2d 1290, 1298 (8th Cir. 1984)

United States v. Esparsen, 930 F.2d 1461, 1470 (10th Cir. 1991), cert. denied, 112 S. Ct. 882 (1992)

United States v. Perez, 922 F.2d 782, 785 (11th Cir.), cert. denied, 111 S. Ct. 2840 (1991)

United States v. Payne, 750 F.2d 844, 860 (11th Cir. 1985)

GOVERNMENT PROPOSED JURY INST. NO. 11Aiding And Abetting (Agency)

The guilt of a defendant in a criminal case may be proved without evidence that he personally did every act involved in the commission of the crime charged. The law recognizes that, ordinarily, anything a person can do for himself may also be accomplished through direction of another person as an agent, or by acting together with, or under the direction of, another person or persons in a joint effort.

So, if the acts or conduct of an agent, employee or other associate of the defendant are willfully directed or authorized by the defendant, or if the defendant aids and abets another person by willfully joining together with that person in the commission of a crime, then the law holds the defendant responsible for the conduct of that other person just as though the defendant had engaged in such conduct himself.

Notice, however, that before any defendant can be held criminally responsible for the conduct of others it is necessary that the defendant willfully associate himself in some way with the crime, and willfully participate in it. Mere presence at the scene of a crime and even knowledge that a crime is being committed are not sufficient to establish that a defendant either directed or aided and abetted the crime. You must find beyond a reasonable doubt that the defendant was a willful participant and not merely a knowing spectator.

United States v. Lindell, 881 F.2d 1313, 1323 (5th Cir. 1989),
cert. denied, 496 U.S. 926 (1990)

United States v. Morrow, 923 F.2d 427, 436 (6th Cir. 1991)

United States v. Lard, 734 F.2d 1290, 1298 (8th Cir. 1984)

United States v. Esparsen, 930 F.2d 1461, 1470 (10th Cir. 1991),
cert. denied, 112 S. Ct. 882 (1992)

United States v. Perez, 922 F.2d 782, 785 (11th Cir.), cert.
denied, 111 S. Ct. 2840 (1991)

United States v. Payne, 750 F.2d 844, 860 (11th Cir. 1985)

COMMENT

United States v. Walker, 621 F.2d 163 (5th Cir. 1980), approved
this instruction.

GOVERNMENT PROPOSED JURY INST. NO. 13Willfully to Cause Criminal Act -- Defined

In order to cause another person to commit a criminal act, it is necessary that the accused willfully do, or willfully fail to do, something which, in the ordinary performance of official duty, or in the ordinary course of the business or employment of such other person, or by reason of the ordinary course of nature or the ordinary habits of life, results in the other person's either doing something the law forbids, or failing to do something the law requires to be done.

An act or a failure to act is "willfully" done, if done voluntarily and intentionally, and with the specific intent to do something the law forbids, or with the specific intent to fail to do something the law requires to be done; that is to say, with bad purpose either to disobey or to disregard the law.

18 U.S.C. § 2

Devitt and Blackmar, *Federal Jury Practice and Instructions* (3d Ed. 1977), Section 12.04

Cheek v. United States, 498 U.S. 192, 196 (1991)

GOVERNMENT PROPOSED JURY INST. NO. 14"Mere Presence" -- Defined

Merely being present at the scene of a crime or merely knowing that a crime is being committed or is about to be committed is not sufficient conduct to find that Defendant _____ committed that crime.

In order to find the defendant guilty of the crime, the government must prove, beyond a reasonable doubt, that in addition to being present or knowing about the crime, Defendant _____ knowingly [**and deliberately**] associated [**himself**] [**herself**] with the crime in some way as a participant -- someone who wanted the crime to be committed -- not as a mere spectator.

18 U.S.C. § 2

Devitt, Blackmar, Wolff and O'Malley, **Federal Jury Practice and Instructions** (4th Ed. 1992), Section 16.09

United States v. Lindell, 881 F.2d 1313, 1323 (5th Cir. 1989), cert. denied, 496 U.S. 926 (1990)

United States v. Morrow, 923 F.2d 427, 436 (6th Cir. 1991)

United States v. Lard, 734 F.2d 1290, 1298 (8th Cir. 1984)

United States v. Esparsen, 930 F.2d 1461, 1470 (10th Cir. 1991), cert. denied, 112 S. Ct. 882 (1992)

United States v. Payne, 750 F.2d 844, 860 (11th Cir. 1985)